

Appl. No. 10/737,307
Atty. Docket No. 9455
Amdt. dated 1/9/2006
Reply to Office Action of 10/07/2006
Customer No. 27752

REMARKS

Claims 1-30 are pending in the present application. No additional claims fee is believed to be due.

Claims 1, 4, 6-9, and 12 have been amended. No new matter is believed added.

Claims 2-3, 5 and 13 have been cancelled.

I. Rejection Under 35 USC § 102(e) Over Takai et al. US 6,479,130

Claims 26 and 27 are rejected under 35 USC §102(e) as being anticipated by Takai et al., US 6,479,130, hereinafter Takai.

With respect to Claim 26, the Office Action fails to show where Takai discloses the three distinct zones as claimed. Specifically, Takai does not disclose "tufted regions" of a nonwoven web, wherein the tufted regions have first and third zones comprising fibers having portions orientated substantially parallel to a plane of the topsheet and a second zone intermediate and adjacent to the first and third zones comprising fibers having substantially no portions parallel to the plane of the topsheet.

Takai appears to disclose some formation of a film that has been ruptured with an underlying nonwoven web. However the nonwoven web is not disclosed as being tufted, and does not have the claimed structure as discussed above. Figure 3 and column 5, lines 63-67, relied upon by the Examiner do not teach, disclose, or otherwise suggest such a structure.

Accordingly, the Applicants respectfully submit that Claim 26 is allowable over Takai and the rejection of Claim 26 should be withdrawn.

With respect to Claim 27, the Office Action fails to show where Takai discloses "tufts" that extend to a distal body-facing portion, "the distal body-facing portion being relatively hydrophobic with respect to the second side.

Accordingly, the Applicants respectfully submit that Claim 27 is allowable over Takai and the rejection of Claim 27 should be withdrawn.

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II. Rejection Under 35 USC §§ 102(e)/103(a) Over Takai ('130)

Claims 1, 2, 4-6, 10-13, and 15 are rejected under 35 USC §102(e) as anticipated by, or, in the alternative 35 USC §103(a) as being obvious over Takai ('130).

With respect to independent Claims 1 and 12, as amended, Takai fails to disclose the limitation of "wherein the first side of the topsheet comprises a plurality of discrete tufts comprising fibers from said relatively hydrophilic nonwoven web" (Claim 1), or "wherein the first side of the topsheet comprises a plurality of discrete tufts comprising fibers from said spunbond nonwoven web" (Claim 12).

Furthermore, the structure of the claimed invention is significantly different from that disclosed by Takai, such that it cannot be maintained that the claimed properties would be inherent in Takai. It is not the case that the claimed properties would necessarily be achieved by making the structure of Takai. There is not reason to believe that the relatively few fibers extending vertically in Takai would be able to transport fluid as well as the tufts of the claimed invention.

Accordingly, Applicants respectfully submit that independent Claims 1 and 12 and their respective independent claims are not anticipated by Takai and the 35 USC §102(e) rejection of claims 1, 2, 4-6, 10-13, and 15 should be withdrawn.

Applicants respectfully traverse 35 USC §103(a) rejection because the reference cited does not establish a *prima facie* case of obviousness. As stated in the MPEP §2143, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Further, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaack, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

1. No suggestion or motivation to modify Takai

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With respect to independent Claims 1 and 12, as amended, Takai fails to disclose, teach, or even suggest the limitation of "wherein the first side of the topsheet comprises a plurality of discrete tufts comprising fibers from said relatively hydrophilic nonwoven web" (Claim 1), or "wherein the first side of the topsheet comprises a plurality of discrete tufts comprising fibers from said spunbond nonwoven web" (Claim 12).

Because Takai fails to even suggest the above-mentioned claim limitation, there can be no suggestion in Takai to make the required modification. Accordingly, the Applicants maintain that there is no motivation to modify Takai to achieve the claimed invention of Claims 1, 12, and their respective independent claims.

2. No teaching or suggestion of all the claim limitations

Takai does not teach, disclose, or suggest the limitation of "wherein the first side of the topsheet comprises a plurality of discrete tufts comprising fibers from said relatively hydrophilic nonwoven web" (Claim 1), or "wherein the first side of the topsheet comprises a plurality of discrete tufts comprising fibers from said spunbond nonwoven web" (Claim 12).

Accordingly, the Applicants maintain that the cited references do not teach or suggest all the claim limitations. Because Takai fails to even suggest the above-mentioned claim limitations, the Applicants maintain that Takai fails to teach or suggest all the claim limitations, and therefore, Claims 1, 12, and their respective independent claims are patentable over Takai.

III. Rejection Under 35 USC § 103(a) Over Takai ('130) in view of Richards et al. US 5,607,414

Claims 3, 7, 8, 14, 16, and 17 are rejected under 35 USC § 103(a) as being unpatentable over Takai ('130) in view of Richards et al., US 5,607,414, hereinafter Richards.

As discussed above, Takai fails to disclose, teach, or even suggest the limitation of "wherein the first side of the topsheet comprises a plurality of discrete tufts comprising fibers from said relatively hydrophilic nonwoven web" (Claim 1, from which 7 and 8 depend), or "wherein the first side of the topsheet comprises a plurality of discrete tufts comprising fibers from said spunbond nonwoven web" (Claim 12, from which Claims 14, 16, and 17 depend).

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Richards fails to remedy the deficiency of Takai. Richards does not disclose, teach or even suggest any discrete tufts of any kind.

Therefore, Applicants respectfully traverse this rejection because the references cited do not establish a *prima facie* case of obviousness. As stated in the MPEP §2143, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Further, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

1. No suggestion or motivation to modify Takai in view of Richards

With respect to the first requirement, the Applicants respectfully submit that there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify Takai in view of Richards to achieve the claimed invention. Richards has nothing to offer Takai that is in any way relevant to the claimed invention. Richards simply discloses apertured topsheets, but the rejected claims require the above-mentioned limitations, none of which Richards can add to Takai.

Because the combination does not achieve the claimed invention there can not possibly be any motivation to combine or modify Takai by the totally unrelated teachings and structure of Richards.

Accordingly, the Applicants maintain that there is no motivation to modify Takai with the teachings of Richards to achieve the claimed invention.

2. No reasonable expectation for success

Modifying Takai by adding the apertured web of Richards would not yield the claimed invention. Neither reference teaches any features relevant to the limitation of "wherein the first side of the topsheet comprises a plurality of discrete tufts comprising fibers from said relatively hydrophilic nonwoven web" (Claim 1, from which Claims 7

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and 8 depend), or “wherein the first side of the topsheet comprises a plurality of discrete tufts comprising fibers from said spunbond nonwoven web” (Claim 12, from which Claims 14, 16, and 17 depend).

Accordingly, the Applicants maintain that there is no reasonable expectation of success in achieving the claimed invention by combining (or attempting to combine) the teaching of Takai with that of Richardson.

3. No teaching or suggestion of all the claim limitations

Neither Takai nor Richards teach, disclose, or suggest the limitation of “wherein the first side of the topsheet comprises a plurality of discrete tufts comprising fibers from said relatively hydrophilic nonwoven web” (Claim 1, from which 7 and 8 depend), or “wherein the first side of the topsheet comprises a plurality of discrete tufts comprising fibers from said spunbond nonwoven web” (Claim 12, from which Claims 14, 16, and 17 depend).

Accordingly, the Applicants maintain that the cited references do not teach or suggest all the claim limitations.

For the reasons above, therefore, the Applicants respectfully submit that the Office Action fails to make out a prima facie case of obviousness for Claims 3, 7, 8, 14, 16, and 17.

IV. Rejection Under 35 USC § 103(a) Over Takai ('130) in view of Richards ('414) and further in view of Thompson et al. (5,382,245)

Claims 9 and 18-25 are rejected under 35 USC §103(a) as being unpatentable over Takai ('130) in view of Richards et al., ('414), and further in view of Thompson et al., 5,382,245, hereinafter “Thompson”.

As discussed above, Takai fails to disclose, teach, or even suggest the limitation of “wherein the first side of the topsheet comprises a plurality of discrete tufts comprising fibers from said relatively hydrophilic nonwoven web” (Claim 1, from which Claim 9 depends), or “wherein the first side of the topsheet comprises a plurality of discrete tufts comprising fibers from said spunbond nonwoven web” (Claim 12, from which Claim 18 depends), or carded hydrophilic fibers (Claims 19-25).

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Thompson fails to remedy the deficiencies of Takai and Richards. Thompson does not disclose, teach or even suggest any discrete tufts of any kind. To say with respect to Claim 19 that simply because Thompson discloses carded fibers that one would also know to combine the carded fibers with the teachings of Richards and Takai to achieve the claimed invention is to ignore the requirements for a *prima facie* case of obviousness. Without all elements being taught in the references, there is no possible combination to achieve the invention, and, therefore, there can be no suggestion to modify to achieve the invention.

Therefore, Applicants respectfully traverse this rejection because the references cited do not establish a *prima facie* case of obviousness. As stated in the MPEP §2143, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Further, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

V. Rejection Under 35 USC § 103(a) Over Takai ('130) in view of Melius US 6,323,388

Claims 19, 20, and 22-24 are rejected under 35 USC §103(a) as being unpatentable over Takai ('130) in view of Melius et al., 6,323,388, hereinafter "Melius".

Applicants respectfully traverse this rejection because the references cited do not establish a *prima facie* case of obviousness. As stated in the MPEP §2143, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Further, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior

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art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

1. No suggestion or motivation to modify Takai

With respect to the first requirement, the Applicants respectfully submit that there is no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify Takai in view of Melius to achieve the claimed invention. It is only with impermissible hindsight analysis that one can derive the value of a carded web with the use of the invention claimed in Claim 19. There is no suggestion in Takai of the value of a carded web, and there is no suggestion in Melius of making the carded web into the structure of Claim 19.

Furthermore, there is no teaching in either reference for "tufts" as claimed in Claim 20.

Accordingly, the Applicants maintain that there is no motivation to modify Takai with the teachings of Melius to achieve the claimed invention.

Accordingly, the Applicants maintain that the cited references do not teach or suggest all the claim limitations.

For the reasons above, therefore, the Applicants respectfully submit that the Office Action fails to make out a *prima facie* case of obviousness for Claims 19, 20, and 22-24.

VI. Rejection Under 35 USC § 103(a) Over Takai in view of Melius, and further in view of Richards

Claim 21 is rejected under 35 USC § 103(a) as being unpatentable over Takai ('130) in view of Melius as applied to claim 19 above and further in view of Richards as applied to Claim 3 above.

As discussed above with respect to Claims 19 and 3, Applicants respectfully traverse this rejection because the references cited do not establish a *prima facie* case of obviousness. As stated in the MPEP §2143, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or

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motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Further, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Accordingly, the Applicants maintain that the cited references do not teach or suggest all the claim limitations of Claim 21.

For the reasons above, therefore, the Applicants respectfully submit that the Office Action fails to make out a *prima facie* case of obviousness for Claim 21.

VII. Rejection Under 35 USC § 103(a) Over Takai ('130) in view of Melius, and further in view of Richards and further in view of Thompson

Claim 25 is rejected under 35 USC § 103(a) as being unpatentable over Takai ('130) in view of Melius as applied to claim 19 above and further in view of Richards as applied to Claim 3 above and further in view of Thompson as applied to Claim 9 above.

As discussed above with respect to Claims 19, 3 and 9, Applicants respectfully traverse this rejection because the references cited do not establish a *prima facie* case of obviousness. As stated in the MPEP §2143, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Further, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Accordingly, the Applicants maintain that the cited references do not teach or suggest all the claim limitations of Claim 25.

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For the reasons above, therefore, the Applicants respectfully submit that the Office Action fails to make out a *prima facie* case of obviousness for Claim 25.

VII. Rejection Under 35 USC § 103(a) Over Takai ('130) in view of Everhart 6,626,961

Claims 28-30 are rejected under 35 USC §103(a) as being unpatentable over Takai ('130) in view of Everhart.

As discussed above with respect to Claim 27, the Office Action fails to show where Takai discloses "tufts" that extend to a distal body-facing portion, "the distal body-facing portion being relatively hydrophobic with respect to the second side."

Everhart fails to remedy the deficiency of Takai. Everhart does not supply the missing claim elements and, therefore, Applicants respectfully traverse this rejection because the references cited do not establish a *prima facie* case of obviousness. As stated in the MPEP §2143, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Further, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Accordingly, the Applicants maintain that the cited references do not teach or suggest all the claim limitations of Claim 28-30.

For the reasons above, therefore, the Applicants respectfully submit that the Office Action fails to make out a *prima facie* case of obviousness for Claims 28-30.

VIII. Double Patenting

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The Applicants agree to submit all necessary Terminal Disclaimers upon the indication of allowable subject matter.

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Conclusion

Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1, 4, 6-12, 14-30.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By


Signature

Roddy M. Bullock

Typed or Printed Name

Registration No. 37,290

(513) 634-0870

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